
HOLLY C. BAKKE, COMMISSIONER
OF BANKING AND INSURANCE OF
THE STATE OF NEW JERSEY, and her
successors in office, in her capacity as
LIQUIDATOR OF HIP OF NEW JERSEY,
INC. D/B/A/ HIP HEALTH PLAN OF NEW
JERSEY

Plaintiff,

-vs-

ANTHONY L. WATSON, WARREN R.
BETTY, STEVEN P. BROWN, KENNETH
M. CARROLL, CYNTHIA CHIN-MARSHALL,
STEVEN M. COHEN, SONIA DELGADO,
LOUIS C. HANSON, JR., JACK HOCUTT, JR.,
SHIRLEY N. HOFFMAN, MICHAEL HOGAN,
CHARLES L. JOHNSTON, STEPHEN I.
LEWIS, AMY MANSUE, DOROTHY D.
MEYER, JANE M. MILLER, LORRAINE
PRINDAVILLE, FREDERICK TITLE,
MICHAEL J. VETTER, VICTORIA WICKS,
LESLIE STRASSBERG, STEVEN TITAN,
ARNOLD FINKEL, JERROLD J. HERCENBERG
CHARLES STEWART, DAVID E. BERMAN,
ROBERT BOWLES, JERRY W. CARLTON,
PAUL T. CUZMANES, WILLIAM J. LUBIN,
JOSEPH G. MATTHEWS, JACK M. MAZUR,
JOHN J. MCDONNELL, DANIEL T.
MCGOWAN, JOHN E. MURPHY, MARTHA
NOVINGER, FRANK L. PROVATO,
CHARLES P. REILLY, DONALD J. RUFFING,
GEORGE E. SCHAFER, MICHAEL D. STARR,
KENNETH H. WEIXEL, HEALTH INSURANCE
PLAN OF GREATER NEW YORK,
WASSERSTEIN PERRELLA & CO., INC., and
JOHN DOES 1-100,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MIDDLESEX COUNTY
DOCKET NO. MID-L-9526-00

Civil Action

**NOTICE OF PROPOSED
SETTLEMENT**

TO: ALL PROVIDERS, MEMBERS, BENEFICIARIES, CLAIMANTS AND CREDITORS AND OTHERS INTERESTED IN THE LIQUIDATION OF HIP OF NEW JERSEY

This Notice is given in accordance with the February 24, 2004 Order of the Honorable Ann G. McCormick, Judge of the Superior Court of New Jersey, Middlesex County, presiding over Bakke v. Watson et al., MID-L-9526-00, Superior Court of New Jersey, Law Division, Middlesex County (the "Commissioner's Action").

HEARING TO APPROVE SETTLEMENTS

The Court has scheduled a hearing for May 18, 2004, at 10:00 a.m., at the Superior Court of New Jersey, Middlesex County Courthouse, 1 JFK Square, New Brunswick, New Jersey. At that time, the Court will consider an application (i) to authorize Holly C. Bakke, the Commissioner of the New Jersey Department of Banking and Insurance, in her capacity as Liquidator of HIP of New Jersey, Inc. d/b/a HIP Health Plan of New Jersey ("HIP-NJ"), pursuant to the authority vested in her by order of the Superior Court of New Jersey, dated April 9, 1999 (the "Liquidation Order"), and pursuant to all powers, obligations and authority, expressed or implied, including those provided to the Liquidator under the provisions of the Life and Health Insurers Rehabilitation and Liquidation Act, N.J.S.A. 17B:32-31 et seq., to settle and dismiss with prejudice the Commissioner's Action; and (ii) to determine that the terms of the settlements described below are fair, reasonable and adequate, and in the best interest of HIP-NJ and its providers, members, beneficiaries, claimants and creditors and the people of the State of New Jersey.

THE PHP SETTLEMENT AGREEMENT

The first settlement agreement (the "PHP Settlement Agreement") is with David E. Berman, Robert Bowles, Jerry Carlton, Paul Cuzmanes, Arnold Finkel, Jerrold Hercenberg, William Lubin, Joseph Mathews, Jack Mazur, John McDonnell, Martha Novinger, Anthony Picini, Frank Provato, Charles Reilly, Ben Rosenbaum III, Donald Ruffing, George E. Schafer, Michael Starr, and Kenneth Weixel (the "PHP Directors and Officers"), who are former officers and/or directors of PHP Healthcare Corporation ("PHP") and/or Pinnacle Health Enterprises, LLC ("PHE"). On November 19, 1998, PHP and PHE filed a voluntary petition for bankruptcy under Chapter 11 of the United States Bankruptcy Code, and PHE subsequently converted its Chapter 11 filing into a liquidation petition under Chapter 7 of the Bankruptcy Code. The PHP Settlement Agreement encompasses not only the named individual PHP Director and Officer defendants, but also the spouses, family members, relatives and heirs of each PHP Director and Officer defendant as well as PHP and its former and present directors, officers, employees, agents, insurers, controlling shareholders, attorneys, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, and assigns, regardless of whether they have been named as defendants in the Commissioner's Action (collectively, the "PHP Settling Parties."). Specifically excluded from the PHP Settlement are certain subsidiaries of PHP which are defined as "Non-Released Subsidiaries" and which are set forth in Exhibit 2 to the PHP Settlement Agreement.

THE HIP SETTLEMENT AGREEMENT

The second agreement (the “HIP Settlement Agreement”) is with (1) Warren R. Betty, Jeffrey A. Brown as Executor of the Estate of Steven P. Brown, Kenneth M. Carroll, Cynthia Chin-Marshall, Steven M. Cohen, Sonia Delgado, Louis C. Hanson, Jr., Jack Hocutt, Jr., Shirley N. Hoffman, James Hogan, Charles L. Johnston, Stephen I. Lewis, Amy Mansue, Dorothy D. Meyer, Jane M. Miller, Lorraine Prindaville, Frederick Title, Michael J. Vetter, and Victoria Wicks, all of whom are former directors and officers of HIP-NJ (“HIP-NJ Directors and Officers”); (2) Health Insurance Plan of Greater New York (“HIP-NY”); (3) Anthony L. Watson, Leslie Strassberg, Daniel T. McGowan, and Steven Titan, all of whom are directors and officers of HIP-NY (“HIP-NY Directors and Officers”); (4) Dresdner Kleinwort Wasserstein, LLC f/k/a Wasserstein Perella & Co., Inc. (collectively “Wasserstein”); and (5) PricewaterhouseCoopers, LLP (“PwC”). The HIP Settlement Agreement encompasses not only the HIP-NJ Directors and Officers, HIP-NY, the HIP-NY Directors and Officers, Wasserstein, and PwC, but also each of their predecessors, successors, parents, subsidiaries, divisions, affiliates, joint venturers and assigns and their present and former directors, officers, members, partners, principals, employees, agents, insurers, shareholders, attorneys, personal and legal representatives, regardless of whether they have been named as defendants in the Commissioner’s Action (collectively, with the PHP Settling Parties, the “Settling Parties”).

The Court will consider an application for the entry of an Order and Final Judgment approving the respective PHP and HIP Settlement Agreements and dismissing the Commissioner’s Action with prejudice and without costs as to all defendants in the Commissioner’s Action, which Order would bar the assertion of any claims presently existing or arising in the future against any of the Settling Parties (as those entities are broadly defined above) that in any way arise out of, relate to, or are in connection with the Common Claims and Released Claims (as those terms are defined below), and the operations, business, insolvency, or liquidation of HIP-NJ.

THE ACTIONS

A. The Commissioner’s Action

Pursuant to the authority conferred by the Liquidation Order and provisions of the Life and Health Insurers Rehabilitation and Liquidation Act, N.J.S.A. 17B:32-31 et seq., the Commissioner filed a complaint (the “Commissioner’s Action”) on November 20, 2000, on behalf of HIP-NJ and also on behalf of HIP-NJ’s providers, members, beneficiaries, claimants, creditors, and the general public of the State of New Jersey, seeking damages stemming from the financial collapse and eventual liquidation of HIP-NJ. The Complaint in the Commissioner’s Action has been amended twice to add new defendants and claims. The Commissioner’s Action names as defendants (1) the PHP Directors and Officers, who were individual members of PHP’s Board of Directors from 1997 to 1998; (2) the HIP-NJ Directors and Officers, who were individual members of the Board of Directors of HIP-NJ and officers who served HIP-NJ during 1997 to 1999; (3) the HIP-NY Directors and Officers, who were officers of HIP-NJ’s parent company, HIP-NY, from 1997 to 1999; (4) HIP-NY; (5) Wasserstein, which provided financial advisory services in 1997 to HIP-NY and its affiliates and subsidiaries, including HIP-NJ; and (6) PwC, an accounting firm which provided auditing services to PHP in 1997. The

Commissioner's Action sets forth claims of common law fraud, aiding and abetting fraud, misrepresentation, breach of fiduciary duty, breach of contract, negligence, gross negligence, and diversion.

B. The Doctors' and Hospitals' Action

On March 3, 1999, a lawsuit was filed in the Superior Court of New Jersey, Law Division, Middlesex County entitled *Medical Society of New Jersey et al. v. Mazur et al.*, No. L-1963-99 (the "Doctors' Action"). The Doctors' Action was brought by the Medical Society of New Jersey against certain directors and officers of PHP, HIP-NJ, HIP-NY, as well as HIP-NY and its insurer on behalf of all of its physician members who rendered services to HIP-NJ members and insureds. On or about April 5, 1999, a similar lawsuit was filed in New Jersey Superior Court, Law Division, Middlesex County, entitled *Atlantic City Medical Center et al. v. Finkel et al.*, No. L-3422-99 on behalf of 57 hospitals and health care providers against various officers and directors of HIP-NJ, HIP-NY, PHP and PHE (the "Hospitals' Action"). The Doctors' and Hospitals' Actions were consolidated, and by order dated July 6, 1999, the Superior Court of New Jersey (Hon. Jack L. Lintner) stayed all proceedings in the Doctors' and Hospitals' Actions. As of the date of this Notice, the stay has not been lifted.

The PHP Directors and Officers, the HIP-NJ Directors and Officers, HIP-NY, the HIP-NY Directors and Officers, Wasserstein and PwC deny all of the Commissioner's claims and allegations of wrongdoing and deny any wrongdoing or liability arising in any way out of their roles with or relationship to HIP-NJ, and, more specifically deny any and all claims against them as alleged in the Commissioner's Action, the Doctors' Action and/or the Hospitals' Action.

Pursuant to statute and case law, the Commissioner has concluded that she alone has the exclusive authority to assert claims on behalf of, and common to, all HIP-NJ insureds, members, creditors and other parties in interest. See *In re Integrity Insurance Co.*, 240 N.J. Super. 480, 496 (App. Div. 1990); *N.J.S.A.* 17:30C-4, -15, 17B:32-50(a)(15). Accordingly, the Commissioner has further concluded that all actions common to all HIP-NJ insureds, members, creditors and other parties in interest arising out of the liquidation of HIP-NJ, including all claims asserted in the Doctors' and Hospitals' Actions, are preempted by the filing of the Commissioner's Action. Notwithstanding the Commissioner's conclusion, to avoid further litigation and to permit the HIP and PHP Settlements to proceed (which is in the best interest of HIP-NJ, its providers, members, beneficiaries, claimants, and creditors, and the people of the State of New Jersey), the Commissioner has agreed to make the payments described below in settlement of the Hospitals' Action and the Doctors' Action.

THE PHP AND HIP SETTLEMENT AGREEMENTS

On February 23, 2004, the parties submitted to the Court the proposed PHP and HIP Settlement Agreements. Both Settlement Agreements contemplate the dismissal with prejudice of the Commissioner's Action and the Doctors' and Hospitals' Actions as well as the entry of an order ("Bar Order") precluding, permanently barring, and enjoining any person or entity from instituting, commencing, or prosecuting, directly, indirectly, representatively, derivatively or in any other capacity, any claim (a) against any of the Settling Parties (the PHP Directors and Officers, PHP, PHE, the HIP-NJ Directors and Officers, HIP-NY, the HIP-NY Directors and

Officers, Wasserstein, and PwC, as broadly defined above) that in any way arises out of or relates to the operations of HIP-NJ or the allegations underlying the facts, events, transactions, or activities set forth in the Commissioner's Action; or (b) that in any way arises out of or relates to the operations, insolvency, rehabilitation and liquidation of HIP-NJ ((a) and (b) are collectively referred to as the "Common Claims").

Both Settlement Agreements also provide that the Commissioner will release any and all claims and causes of action, of every nature and description whatsoever, including both known claims and unknown claims, that have been or could have been asserted or may be asserted in the future, by the Commissioner, or by any persons or governmental agency of the State of New Jersey on whose behalf the Commissioner represents, including any claims asserted by the Commissioner in a representative capacity on behalf of the former providers, members, beneficiaries and creditors of HIP-NJ, against any of the Settling Parties, which arise out of or relate in any way to the allegations, transactions, facts, events, or representations set forth, alleged, or referred to in the Commissioner's Action (the "Released Claims").

The PHP and HIP Settlement Agreements also provide, among other things, for the payment of certain funds to the Estate of HIP-NJ in Liquidation on behalf of all HIP-NJ members, creditors and other parties in interest, as well as the exchange of releases among the parties to the Commissioner's Action upon the satisfaction of various conditions precedent, including the entry of a final and unappealable Order in the Commissioner's Action: (1) authorizing the Commissioner to enter into and carry out the PHP and HIP Settlement Agreements; (2) dismissing the Commissioner's Action with prejudice and without costs; and (3) barring the assertion of any claims against any of the Settling Parties that in any way arise out of, relate to, or are in connection with the Common Claims and/or Released Claims.

THE SETTLEMENT FUNDS

The PHP Settlement Agreement calls for payment in the amount of \$3 million on behalf of the PHP Directors and Officers (paid consistent with the terms of a National Union Fire Insurance Company of Pittsburgh, Pennsylvania ("National Union") Executive Liability and Indemnification Policy No. 856-06-09 and any other applicable Court Order) from National Union, carrier for the director and officer liability insurance policy held by PHP (the "PHP Settlement Proceeds"). The PHP Settlement Proceeds will be reduced by \$180,000.00 -- \$90,000.00 of which will be paid to resolve, dismiss and fully compromise the claims asserted by plaintiffs in the Hospitals' Action, and \$90,000.00 of which will be paid to resolve, dismiss and fully compromise the claims asserted by plaintiffs in the Doctors' Action.

The HIP Settlement Agreement calls for, among other things, payment in the aggregate amount of \$29 million from HIP-NY, the HIP-NJ Directors and Officers, the HIP-NY Directors and Officers, Wasserstein and PwC (the "HIP Settlement Proceeds"). The HIP Settlement Agreement also provides that the Commissioner will transfer to HIP-NY and/or its assigns whatever rights, title and interests it may have in the trademarks, tradenames and domain names of HIP-NJ, including, but not limited to, HIP-NJ, Rutgers Community Health Plan, HIP Rutgers Health Plan, HIP/Rutgers Prime, and HIPUSA.com.

It is a condition precedent to the HIP Settlement that the Hospitals' Action and the Doctors' Action are dismissed with prejudice. Simultaneously with these settlements, the Commissioner has agreed that, if the HIP Settlement is approved by the Court, the HIP Settlement Proceeds will be reduced by \$1,000,000.00 -- \$500,000.00 of which will be paid to resolve, dismiss and fully compromise the claims asserted by plaintiffs in the Hospitals' Action, and \$500,000.00 of which will be paid to resolve, dismiss and fully compromise the claims asserted by plaintiffs in the Doctors' Action.

It is anticipated that, net of all deductions, the PHP and HIP Settlement Proceeds will total approximately \$30,820,000 million, which shall be disbursed to the General Account of HIP-NJ in Liquidation for eventual distribution in accordance with the relevant provision of the Life and Health Insurers Rehabilitation and Liquidation Act, N.J.S.A. 17B:32-71. After thorough examination, the Commissioner has determined that the PHP and HIP Settlement Agreements are fair, reasonable and adequate, and in the best interests of HIP-NJ and its providers, members, beneficiaries, claimants and creditors and the people of the State of New Jersey.

THE BAR ORDER

Upon the Court's preliminary approval of the PHP and HIP Settlement Agreements, the parties have asked the Court to consider an application for the entry of a Bar Order, barring, extinguishing and discharging any and all past, present and future Common Claims and Released Claims (as defined above), however denominated, whether known or unknown, of any person or entity against any of the parties to the Commissioner's Action (including their predecessors, successors, parents, subsidiaries, divisions, joint ventures, and assigns and their former and current directors, officers, employees, partners, principals, agents, insurers, co-insurers, reinsurers, controlling shareholders, attorneys, personal or legal representatives, regardless of whether they have been named as defendants in the Commissioner's Action) that in any way arise out of, relate to, or are in connection with the operations, business, insolvency, or liquidation of HIP-NJ, or any of the facts, events, transactions, or activities set forth in the Commissioner's Action. The intent of the application is to obtain an order barring, extinguishing and discharging all future actions that may arise out of, relate to, or are in connection with the Common and/or Released Claims.

Any person or entity who may wish to contend that its relationship with HIP-NJ was formed, continued, or affected in any manner by any act or omission (whether intentional, negligent or otherwise) chargeable to any party in the Commissioner's Action, or that any party may be liable to it for any other reason, should appear at the hearing to present its position since, upon approval of the proposed Settlements, any Common or Released Claims asserted by that person or entity will be forever barred. Furthermore, all recipients of this Notice should recognize that the Commissioner will contend that any present or future claim that the recipient may wish to assert is barred as a Common or Released Claim within the meaning of In re Integrity Insurance Co., 240 N.J. Super. 480 (App. Div. 1990), N.J.S.A. 17:30C-4-15, 17B:32-50(a)(15), and/or any opinion or Order of this Court.

PURPOSE OF THE NOTICE

This Notice is given to you because your rights may be affected by the PHP and HIP Settlement Agreements and the proposed Bar Order. This Notice should not be interpreted as an expression of any opinion by any court concerning the merits of the Commissioner's Action, the advisability of the respective PHP and HIP Settlement Agreements, or the appropriateness of the proposed Bar Order. This Notice is to advise you of the pendency of the Commissioner's Action, the proposed PHP and HIP Settlement Agreements, and the proposed Bar Order so that you may decide what steps to take in order to protect whatever rights you may have with respect to any of the subject matters of this Notice. However, receipt of this Notice does not necessarily mean that you have a present claim or will have a future claim against HIP-NJ or any party to the Commissioner's Action. Neither the PHP Settlement Agreement nor the HIP Settlement Agreement nor the Bar Order shall act to bar or compromise any Proof of Claim filed by a claimant in any administrative proceeding against HIP-NJ in Liquidation or shall in any way affect the determination or adjudication of such Proof of Claim.

Although the determination of the fairness and adequacy of the PHP and HIP Settlement Agreements will be heard by the Court at the same time, they will be presented for separate consideration by the Court and the approval of either one is not a condition of the other.

Anyone may request a copy of the Commissioner's application to approve the PHP and HIP Settlement Agreements through either one of the following means: 1) submitting a request in writing to Deputy Liquidator, HIP of New Jersey in Liquidation, 825 Georges Road, New Brunswick, New Jersey 08902 or 2) transmitting the request to the Deputy Liquidator by facsimile at (732) 296-9647. When requesting copies of documents, please specify whether you would like copies of the entire application or just the proposed PHP or HIP Settlement Agreements. Please supply your name, full address, and telephone number where you may be reached Monday through Friday during regular business hours.

If you propose to take any position in the hearing, you must file, in writing, a statement of position with the Honorable Ann G. McCormick, J.S.C., Superior Court of New Jersey, Law Division, Middlesex County Courthouse, 1 JFK Square, P.O. Box 2690, New Brunswick, New Jersey 08903-0964. A copy of your statement of position must also be delivered simultaneously to:

**Steven S. Radin, Esq.
Sills Cummis Epstein & Gross, P.C.
One Riverfront Plaza
Newark, New Jersey, 07102-4500
Special Counsel to the Liquidator**

**Emerald Erickson Kuepper, Esq., D.A.G.
Department of Law and Public Safety
R.J. Hughes Justice Complex
P.O. Box 117
Trenton, New Jersey 08625
Counsel to the Liquidator**

**Deputy Liquidator
HIP of New Jersey in Liquidation
825 Georges Road
New Brunswick, New Jersey 08902**

**Bruce H. Schneider, Esq.
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038
On behalf of HIP Settling Defendants**

**Thomas F. Doherty, Esq.
Tompkins, McGuire, Wachenfeld & Barry, LLP
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102-4070
On behalf of PHP Settling Defendants**

The statement of position must be received no later than 4:00 p.m. on April 23, 2004. If no statement is received by that date and time, you will not be entitled to be heard at the hearing and you will be forever barred from bringing any present or future claims against any party to the Commissioner's Action arising out of, relating to, or in connection with the affairs, operations, business, insolvency, rehabilitation or liquidation of HIP-NJ.

This Notice is summary in nature and does not purport to describe all of the terms of the proposed PHP and HIP Settlement Agreements.

Respectfully yours,

Holly C. Bakke
Commissioner of the Department of Banking
and Insurance, and in her capacity as Liquidator of
HIP of New Jersey, Inc. d/b/a HIP Health Plan of
New Jersey